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Attorneys for Defendants
COUNTY OF SOLANO, ARMANDO ESPINOZA and
STEPHANIE BACHMAN (erroneously sued as
STEPHANIE M. GARCIA)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOHN DOE,

Plaintiff,

v.

COUNTY OF SOLANO, ARMANDO
ESPINOZA, and STEPHANIE M. GARCIA, and
DOES 1 through 20, inclusive,

Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1441**

[FEDERAL QUESTION]

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE THAT Defendants COUNTY OF SOLANO, ARMANDO
ESPINOZA, and STEPHANIE BACHMAN (erroneously sued as STEPHANIE M. GARCIA)
(collectively “Defendants”) hereby files in the United States District Court for the Eastern District
of California a Notice of Removal of said action to the United States District Court, pursuant to 28
U.S.C. §§ 1441 and 1446.

On December 28, 2022, an action was commenced in the Superior Court of the State of
California in and for the Solano, entitled John Doe v. County of Solano, et al., Case No.
FCS059408 (“State Court Action”). A true and correct copy of the Complaint served on

Defendants is attached hereto as Exhibit A.

Defendant COUNTY OF SOLANO was served with a copy of the Complaint from the State Court Action on December 29, 2022. Defendants ARMANDO ESPINOZA and STEPHANIE BACHMAN (erroneously sued as STEPHANIE M. GARCIA) have not been personally served, but Notice and Acknowledgment of Receipt packets were received by COUNTY OF SOLANO.

This removal is timely under 28 U.S.C. § 1446(b) in that removal is sought within 30 days from the date Defendant COUNTY OF SOLANO was first served with a copy of the Complaint.

This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. § 1331, and is one which may be removed to this Court by Defendants pursuant to the provisions of 28 U.S.C. § 1446(b) as it purports to arise under 42 U.S.C. § 1983. To the extent that Plaintiff's Complaint alleges a claim or cause of action other than violations of rights under the laws of the United States, said cause(s) of action may be removed and adjudicated by this Court pursuant to 28 U.S.C. § 1441(c). Venue in this district is proper under 28 U.S.C. § 1441 because this District includes the California Superior Court for Solano County, the forum in which the removed action was pending.

Defendants will promptly file a Notice of this Removal with the Clerk of the Superior Court for Solano County and serve the Notice on all parties.

Defendants pray that the above action now pending in California Superior Court for Solano County be removed in its entirety to this Court for all further proceedings, pursuant to 28 U.S.C. § 1441, et. seq.

DATED: January 30, 2023

HAWKINS PARNELL & YOUNG, LLP

By: /s/ Danielle K. Lewis
DANIELLE K. LEWIS
MILES F. MAURINO
Attorneys for Defendants
COUNTY OF SOLANO,
ARMANDO ESPINOZA and
STEPHANIE BACHMAN
(erroneously sued as STEPHANIE
M. GARCIA)

EXHIBIT A

FILED/ENDORSED
Clerk of the Superior Court

DEC 28 2022

By A. Amaral
DEPUTY CLERK

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Attorneys for Plaintiff John Doe

ASSIGNED TO
E. Bradley Nelson
JUDGE
FOR ALL PURPOSES

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SOLANO – UNLIMITED JURISDICTION**

FCs059408

JOHN DOE,

Plaintiff,

v.

COUNTY OF SOLANO, ARMANDO
ESPINOZA, and STEPHANIE M. GARCIA, and
DOES 1 through 20, inclusive,

Defendants.

COMPLAINT FOR DAMAGES

1. Deliberate Indifference—
Fourteenth Amendment (42 U.S.C.
§ 1983)
2. Municipal Liability—
Unconstitutional Custom, Practice,
or Policy (42 U.S.C. § 1983)
3. Municipal Liability—Failure to
Train (42 U.S.C. § 1983)
4. Municipal Liability—Ratification
(42 U.S.C. § 1983)
5. Bane Act (Civ. Code, § 52.1)
6. Negligence

DEMAND FOR JURY TRIAL

INTRODUCTION

1. This action arises out of the foreseeable, preventable sexual assault of a pretrial detainee at the Solano County Jail, Stanton Correctional Facility, by his cellmate, a man who had previously sexually assaulted no fewer than nine (9) other inmates as he was given a revolving carousel of cellmates to victimize.

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THE PARTIES, JURISDICTION AND VENUE

2. Plaintiff JOHN DOE ("Plaintiff") is suing under a pseudonym in order to protect his privacy given the sensitive nature of the allegations of sexual assault in this case and his fear of reprisal from the sexual assailant and his associates. Plaintiff was a pretrial detainee at the Solano County Jail, Stanton Correctional Facility at the time the events giving rise to this action occurred, and he has since been released from custody.

3. Defendant COUNTY OF SOLANO ("County") is a California county, located within the jurisdictional territory of this Court. At all relevant times, defendant County possessed the power and authority to adopt policies and proscribe rules, regulations and practices affecting the tactics, methods, practices, and customs taking place in the jail facilities under its control, including its Stanton Correctional Facility. At all relevant times pertinent to this action, defendant County maintained the Solano County Sheriff's Office ("SCSO") that was responsible for administering and staffing the County's jails, including the Stanton Correctional Facility at which the events giving rise to this action took place.

4. At all times pertinent to this action, defendant County employed or contracted with defendant ARMANDO ESPINOZA as a correctional officer in its Stanton Correctional Facility in which the events giving rise to this action took place, as well as other of its jail facilities.

5. At all times pertinent to this action, defendant County employed or contracted with defendant STEPHANIE M. GARCIA as a correctional officer in its Stanton Correctional Facility in which the events giving rise to this action took place.

6. Plaintiff is informed and believes and thereon alleges that at all relevant times, defendants named as Does 1-20, are or were employees, officers and/or agents of the County, or otherwise materially caused the harm described herein, and did so under color of law, and within the scope of their agency, employment or enterprise with the County. Allegations against the named defendants are intended to include the defendants identified as Does 1-20. Plaintiff is ignorant of the true names and identities of the defendants named as Does 1-20 because Plaintiff has not yet been able to discover which individual correctional officers had relevant information regarding the sexual assailant in this case, as well as the policymakers, final decisionmakers, trainers, and/or supervisors

1 employed or contracted by the County or otherwise acting under color of law who were responsible
2 for the relevant policies, procedures, actions, and omissions that permitted Plaintiff to be confined
3 with a cellmate who had repeatedly sexually assaulted a revolving carousel of his cellmates and
4 other inmates.

5 7. Defendants Espinoza, Garcia, and those sued as Does 1-20 will hereinafter be
6 collectively as the "Individual Defendants." Plaintiff is informed and believes, and on that basis
7 alleges, that at all relevant times herein mentioned, the Individual Defendants, and each of them,
8 were the agents, employees and/or representatives of defendant County, and were acting within the
9 course and scope of said relationships. Plaintiff further alleges that in all matters alleged herein, the
10 Individual Defendants, and each of them, acted under color of law.

11 8. Plaintiff requested information pertinent to this action, including his own police report,
12 from the County of Solano pursuant to the California Public Records Act (Cal. Gov. Code, § 6240,
13 et seq.) on September 27, 2022 by and through his counsel. The County requested and received an
14 authorization from Plaintiff's counsel, stated that there may be responsive documents and took
15 multiple extensions of time, the last of which ended on November 21, 2022. Despite repeated
16 attempts to obtain a response from the County, Plaintiff's counsel still has not received records in
17 response to the request. Plaintiff further requested a copy of his police report as a sexual assault
18 victim pursuant to California Family Code section 6228, subdivision (a)(2) by and through his
19 counsel on November 29, 2022, but long after the ten (10) day deadline passed, the County still has
20 not provided his police report.

21 9. All conduct, acts, and omissions giving rise to this action occurred within the County of
22 Solano, State of California. The federal causes of action arise under title 42 of the United States
23 Code section 1983.

24 10. Plaintiff presented a timely government claim pursuant to California Government Code
25 section 945.4 to the County of Solano on May 27, 2022 for the sexual assault he suffered on or about
26 December 2, 2021. The County rejected his government claim by letter issued on July 1, 2022. This
27 action is filed before the expiration of the time period set forth in California Government Code
28 section 945.6.

Complaint for Damages

FACTS COMMON TO ALL CAUSES OF ACTION

11. On or about November 29, 2021, the County and defendants named as Does 1-20 placed Plaintiff, a pretrial detainee, in a cell with inmate Kurt Alan DaSilva. The cell was in a protected custody unit. Plaintiff thought he would be safer and less likely to be subjected to violence and sexual assault in a protected custody unit. He was wrong.

12. On or about December 1, 2021, DaSilva offered Plaintiff some coffee, which Plaintiff accepted. Plaintiff fell asleep in the evening. Plaintiff is informed and believes, and on that basis alleges, that the coffee DaSilva provided was laced with a drug.

13. In the morning of December 2, 2021, Plaintiff awoke to find inmate DaSilva with his fingers in Plaintiff's anus attempting to lick Plaintiff's genitals. Plaintiff jolted forward, at which point DaSilva sniffed his fingers. Traumatized, Plaintiff wrapped himself in a blanket. Eventually County correctional staff entered the cell.

14. Plaintiff is informed and believes and thereon alleges that County personnel were not responding to the rape that he endured but rather had other information regarding DaSilva on which it was acting.

15. Plaintiff alleges that defendant County, defendant Espinoza, defendant Garcia, and defendants named as Does 1-20 knew or should have known that DaSilva had a history of sexually assaulting other inmates, including his cellmates, based on the information set forth in the paragraphs that follow.

16. Plaintiff is informed and believes, and on that basis alleges, the following facts in this paragraph: DaSilva had sexually assaulted no fewer than nine (9) other inmates prior to assaulting Plaintiff. Prior to Plaintiff's sexual assault, other inmates told both defendant Garcia and defendant Espinoza of DaSilva's sexual assaults on inmates that they had heard occurring through the vents or otherwise learned about from the victims or DaSilva himself. DaSilva's sexual assaults were loud enough to be heard through the vents, and DaSilva announced his sexual assaults, often accomplished by drugging his cellmates' coffee, through the vents.

17. Plaintiff is informed and believes, and on that basis alleges, the following facts in this paragraph: DaSilva was assigned an unusually high number of new cellmates prior to his sexual

1 assault of Plaintiff. Some of DaSilva's prior cellmates requested to be reassigned because of his
2 sexually predatory behavior. In or about September 2021 – approximately two and half months
3 before DaSilva sexually assaulted Plaintiff – an inmate (whose name is being withheld from public
4 records to protect him from retaliation) requested to speak with correctional officers to request a
5 cellmate change. The County sent a correctional officer from a gang unit, named as a Doe
6 defendant, to whom the inmate reported that DaSilva was repeatedly trying to commit sexual acts on
7 him against his will. That correctional officer did not want to hear any details, but the inmate was
8 removed from DaSilva's cell.

9 18. Plaintiff is informed and believes, and on that basis alleges, the following facts in this
10 paragraph: DaSilva repeatedly violated a prohibition on entering other inmates' cells, where he
11 sexually assaulted some inmates prior to his sexual assault of Plaintiff. Also prior to his sexual
12 assault of Plaintiff, DaSilva frequently displayed sexually predatory and inappropriate behavior by
13 touching other inmates' genitals with his hands, humping other inmates, exposing his genitals to
14 other inmates, touching his bare genitals to other inmates, and yelling sexually lewd comments such
15 as, "I need someone to sit on my dick," in earshot of correctional officers, including defendant
16 Garcia.

17 19. Plaintiff is informed and believes, and on that basis alleges, the following facts in this
18 paragraph: DaSilva and defendant Espinoza knew each other from earlier in their lives. Defendant
19 Espinoza gave DaSilva special treatment, favors, and information about other inmates, which put
20 them in danger from DaSilva. DaSilva threatened to harm his victims and their families, including
21 Plaintiff's, if they reported his sexual assaults. Plaintiff and other of DaSilva's victims feared
22 reprisal particularly because of defendant Espinoza's personal relationship with DaSilva.

23 20. After Plaintiff reported his sexual assault, defendant Garcia told Plaintiff that
24 correctional staff knew something was going on with DaSilva.

25 21. Plaintiff made an allegation pursuant to the Prison Rape Elimination Act on December
26 3, 2021. The County responded to Plaintiff on January 12, 2022 by letter stating, "After reviewing
27 your complaint and conducting a thorough investigation we have found sufficient evidence to
28 corroborate your allegation. This allegation is determined to be SUBSTANTIATED and referred to

1 the Solano County DA's Office for review."

2 **FIRST CAUSE OF ACTION**

3 **Deliberate Indifference—Fourteenth Amendment (42 U.S.C. § 1983)**

4 **Against the Individual Defendants**

5 22. Plaintiff restates and incorporates by reference the allegations of the foregoing
6 paragraphs of this complaint, as if set forth in full.

7 23. In doing the acts complained of herein, the Individual Defendants, and each of them,
8 knowingly acted without immunity and under color of law to deprive Plaintiff, a pretrial detainee, of
9 his clearly established due process right under the Fourteenth Amendment to the United States
10 Constitution to be free from violence from other inmates. The Individual Defendants, and each of
11 them, were acting or purporting to act under color of law and within the course and scope of their
12 duties as agents, employees and/or contractors of the County.

13 24. Plaintiff is informed and believes, and on that basis alleges, that the Individual
14 Defendants, and each of them, knew that Plaintiff faced a substantial risk of serious harm by sexual
15 violence perpetrated by his fellow inmate, DaSilva, and disregarded that risk by confining Plaintiff
16 to a cell with DaSilva and failing to take reasonable measures to abate the risk, including but not
17 limited to confining Plaintiff to a cell with someone other than DaSilva and more closely monitoring
18 the cell in which both DaSilva and Plaintiff were placed.

19 25. The acts and/or omissions of the Individual Defendants, and each of them, placed
20 Plaintiff at substantial risk of suffering serious harm. The acts and/or omissions of the Individual
21 Defendants, and each of them, constituted deliberate indifference to and reckless disregard of the
22 substantial risk that Plaintiff would be sexually assaulted by his cellmate, DaSilva.

23 26. As a direct result of these acts and omissions of the Individual Defendants, and each of
24 them, Plaintiff was subjected to sexual assault, causing him bodily harm, severe physical pain,
25 severe pain and suffering, and severe emotional distress.

26 27. The Individual Defendants' deliberate indifference and reckless disregard of the
27 substantial risk that Plaintiff would be sexually assaulted by his cellmate, DaSilva, was a substantial
28 factor in causing Plaintiff's harm.

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SECOND CAUSE OF ACTION

Against Defendant County and Individual Defendants named as Does 1-20

31. In doing the acts complained of herein, the County and the Individual Defendants, named as Does 1-20, knowingly acted without immunity and under color of law to deprive Plaintiff of his civil rights under the Fourteenth Amendment to the United States Constitution. The Individual Defendants, and each of them, were acting or purporting to act in the performance of their official duties as part of defendant County. At all relevant times, defendant County employed or contracted with the Individual Defendants, named as Does 1-20, as policymakers and/or supervisors of the other Individual Defendants.

Complaint for Damages

1 believes, and on that basis alleges, that defendants County and Individual defendants, named as Does
2 1-20, in the capacities as policymakers and/or supervisors, acted or failed to act regarding such
3 policies, practices, or customs with deliberate indifference to the constitutional rights of pretrial
4 detainees, including Plaintiff.

5 33. Plaintiff's Fourteenth Amendment due process rights were violated when he was
6 confined to a cell with DaSilva, who had previously sexually assaulted no fewer than nine (9) other
7 inmates and otherwise demonstrated sexually predatory behavior.

8 34. Plaintiff is informed and believes, and on that basis alleges, that these policies,
9 practices, and customs of the County and Individual Defendants, named as Does 1-20, in their
10 capacities as policymakers and/or decisionmakers, are the direct, proximate, and substantial cause of
11 the constitutional violations Plaintiff suffered. Plaintiff is further informed and believes, and on that
12 basis alleges, that the Individual Defendants, including but not limited to defendants Espinoza and
13 Garcia, acted pursuant to an expressly adopted official policy or longstanding practice or custom of
14 defendant County.

15 35. As a direct and proximate result of these policies, practices, and customs, Plaintiff
16 suffered bodily harm, severe physical pain, severe pain and suffering, and severe emotional distress.

17 36. The acts and/or omissions of the official policymakers and/or supervisors, named as
18 Does 1-20, was willful, wanton, malicious, and done with reckless disregard for the rights and safety
19 of Plaintiff and therefore warrants the imposition of exemplary and punitive damages in an amount
20 according to proof at trial.

21 37. Plaintiff seeks attorneys' fees, costs, and interest in connection with this claim for
22 relief.

23 **THIRD CAUSE OF ACTION**

24 **Municipal Liability—Failure to Train (42 U.S.C. § 1983)**

25 **Against Defendant County and Individual Defendants named as Does 1-20**

26 38. Plaintiff restates and incorporates by reference the allegations of the foregoing
27 paragraphs of this complaint, as if set forth in full.

28 39. In doing the acts complained of herein, the County and the Individual Defendants

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1 named as Does 1-20 knowingly acted without immunity and under color of law to deprive Plaintiff
2 of his civil rights under the Fourteenth Amendment to the United States Constitution. The
3 Individual Defendants, and each of them, were acting or purporting to act in the performance of their
4 official duties as part of defendant County. At all relevant times, defendant County employed or
5 contracted with the Individual Defendants, named as Does 1-20, as trainers and/or supervisors of the
6 other Individual Defendants.

7 40. Plaintiff is informed and believes, and on that basis alleges, the training program
8 provided by defendant County, and the training provided by the Individual Defendants, named as
9 Does 1-20, as trainers and/or supervisors of the Individual Defendants, including but not limited to
10 defendants Espinoza and Garcia, was not adequate to prepare the Individual Defendants to take
11 effective action to protect pretrial detainees in circumstances similar to those presented in this case,
12 including, inter alia, (i) identifying repetitive, sexually predatory behavior of inmates, including but
13 not limited to the unusual cycling for cellmates, (ii) not placing inmates in cells with other inmates
14 who have displayed repetitive predatory behavior, and (iii) more closely monitoring cells of inmates
15 who have displayed predatory behavior.

16 41. Plaintiff is informed and believes, and on that basis alleges, high ranking officials at
17 defendant County, including trainers and/or supervisors, named as Does 1-20, knew or reasonably
18 should have known that the Individual Defendants' lack of training regarding identifying and
19 preventing sexual assaults of inmates was likely to result in the deprivation of pretrial detainees'
20 Fourteenth Amendment rights to be free from violence from other inmates. Plaintiff is further
21 informed and believes, and on that basis alleges, that defendants County and Does 1-20, as
22 supervisors and/or trainers, acted or failed to act regarding such training with deliberate indifference
23 to the constitutional rights of pretrial detainees, including Plaintiff.

24 42. As a direct result of the actions of the Individual Defendants, as well as the failure of
25 defendants County and Does 1-20, as supervisors and/or trainers, to provide adequate training,
26 Plaintiff's Fourteenth Amendment due process rights were violated when he was confined to a cell
27 with DaSilva, who had previously sexually assaulted no fewer than nine (9) other inmates and
28 otherwise demonstrated sexually predatory behavior.

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43. Plaintiff suffered bodily harm, severe physical pain, severe pain and suffering, and severe emotional distress.

44. The acts and/or omissions of the trainers and/or supervisors, named as Does 1-20, was willful, wanton, malicious, and done with reckless disregard for the rights and safety of Plaintiff and therefore warrants the imposition of exemplary and punitive damages in an amount according to proof at trial.

45. Plaintiff seeks attorneys' fees, costs, and interest in connection with this claim for relief.

FOURTH CAUSE OF ACTION

Municipal Liability—Ratification (42 U.S.C. § 1983)

Against Defendant County and Individual Defendants named as Does 1-20

46. Plaintiff restates and incorporates by reference the allegations of the foregoing paragraphs of this complaint, as if set forth in full.

47. In doing the acts complained of herein, the County and the Individual Defendants, named as Does 1-20, knowingly acted without immunity and under color of law to deprive Plaintiff of his civil rights under the Fourteenth Amendment to the United States Constitution. The Individual Defendants, and each of them, were acting or purporting to act in the performance of their official duties as part of defendant County. At all relevant times, Defendant County employed or contracted with the Individual Defendants, named as Does 1-20, as policymakers and/or decisionmakers.

48. The civil rights of Plaintiff—specifically his Fourteenth Amendment due process rights—were violated when the Individual Defendants, and each of them, acted with deliberate indifference and reckless disregard of the substantial risk that Plaintiff would suffer sexual assault when he was confined to a cell with DaSilva, who had previously sexually assaulted no fewer than nine (9) inmates and otherwise demonstrated sexually predatory behavior.

49. Plaintiff is informed and believes, and on that basis alleges, the following facts in this paragraph: Defendant County and Individual Defendants, named as Does 1-20, acting under color of law, who had final policymaking and/or decision-making authority concerning the acts of the other

1 Individual Defendants, ratified the actions of the Individual Defendants, including that of defendants
2 Espinoza and Garcia, and the bases for them. The County knew of and approved of the acts and/or
3 omissions of the Individual Defendants, including but not limited to defendants Espinoza and
4 Garcia. The County, and final policymakers and/or decisionmakers, named as Does 1-20, knew of
5 and approved, ratified, condoned, encouraged and/or tacitly authorized the acts and/or omissions
6 which constituted deliberate indifference and reckless disregard of Plaintiff's Fourteenth
7 Amendment rights.

8 50. That ratification constituted a conscious and deliberate choice to follow a course of
9 action from among various alternatives. That ratification constituted approval of the actions of the
10 Individual Defendants with knowledge of the circumstances under which Plaintiff was confined to a
11 cell with a sexual predator, specifically DaSilva.

12 51. As a direct and proximate result of the actions and/or omissions of the Individual
13 Defendants, as well as the ratification of those actions by the County and Does 1-20, Plaintiff
14 suffered bodily harm, severe physical pain, severe pain and suffering, and severe emotional distress.

15 52. The acts and/or omissions of the official policymakers and decisionmakers, named as
16 Does 1-20, was willful, wanton, malicious, and done with reckless disregard for the rights and safety
17 of Plaintiff and therefore warrants the imposition of exemplary and punitive damages in amount
18 according to proof at trial.

19 53. Plaintiff seeks attorneys' fees, costs, and interest in connection with this claim for
20 relief.

21 **FIFTH CAUSE OF ACTION**

22 **Bane Act (Civ. Code, § 52.1)**

23 **Against the Individual Defendants**

24 54. Plaintiff restates and incorporates by reference the allegations of the foregoing
25 paragraphs of this complaint, as if set forth in full.

26 55. In doing the acts complained of herein, the Individual Defendants, and each of them,
27 knowingly acted without immunity and within the course and scope of their employment to deprive
28 Plaintiff, a pretrial detainee, of his clearly established due process right under the Fourteenth

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1 Amendment to the United States Constitution to be free from violence from other inmates.

2 56. By the aforementioned conduct, the Individual Defendants, and each of them, acted
3 with deliberate indifference to Plaintiff's constitutional rights under the United States Constitution,
4 the California Constitution, and the laws of this state to privacy, safety in his bodily integrity, and
5 freedom from sexual violence based on his sex (Cal. Civ. Code, §§ 51.7, 52.4 & 43).

6 57. In committing the aforementioned conduct, the Individual Defendants, and each of
7 them, intended to deprive Plaintiff of the enjoyment of the interests protected by these constitutional
8 and statutory rights.

9 58. As a direct and proximate result of the conduct of the Individual Defendants, Plaintiff
10 was harmed. Plaintiff experienced extreme pain and suffering, including but not limited to his anal
11 area, and severe emotional distress, including but not limited to fear, vulnerability, distrust, anxiety,
12 depression, embarrassment, and humiliation. Plaintiff is informed and believes, and on that basis
13 alleges, Plaintiff will continue to suffer extreme mental pain and suffering and severe emotional
14 distress in the future as a result of the injuries alleged herein.

15 59. The conduct of the Individual Defendants, and each of them, was a substantial factor in
16 causing Plaintiff's harm.

17 60. As a further direct and proximate result of the aforementioned acts of the Individual
18 Defendants, and each of them, Plaintiff has and/or will incur expenses for medical and mental health
19 services, pharmaceuticals, and sundries reasonably required to treat the injuries incurred herein.

20 61. As a further direct and proximate result of the aforementioned acts of the Individual
21 Defendants, and each of them, Plaintiff has suffered economic harm, loss of earnings, and other
22 damages.

23 62. The aforementioned conduct of the Individual Defendants, and each of them, was
24 despicable. The Individual Defendants, and each of them, acted with conscious disregard for the
25 rights, health, safety, privacy, freedom, and human dignity of Plaintiff. The Individual Defendants,
26 and each of them, also acted with the knowledge of or with reckless disregard for the fact that his
27 conduct was substantially certain to cause injury and/or humiliation to Plaintiff. Therefore, Plaintiff
28 is entitled to recover exemplary damages pursuant to Civil Code section 52.1, subdivision (c) and

1 Civil Code section 52, subdivision (b)(1).

2 63. Plaintiff will incur attorney's fees in the prosecution of this action and therefore seeks
3 attorney's fees pursuant to Civil Code section 52.1, subdivisions (c) and (i) and Civil Code section
4 52, subdivisions (a) and (b)(3).

5 64. Plaintiff also seeks treble actual damages pursuant to Civil Code section 52.1,
6 subdivision (c) and Civil Code section 52, subdivision (a).

7 **SIXTH CAUSE OF ACTION**

8 **Negligence**

9 **The Individual Defendants**

10 65. Plaintiff restates and incorporates by reference the allegations of the foregoing
11 paragraphs of this complaint, as if set forth in full.

12 66. The Individual Defendants, and each of them, had a duty to act with ordinary care in
13 carrying out their duties as correctional officers, which included reasonable care in confining
14 inmates with other inmates who had displayed indications of predatory behavior. This duty of
15 reasonable care included identifying signs and signals of predatory behavior, not confining inmates
16 to cells with other inmates displaying such behavior, and more closely monitoring cells containing
17 inmates who displayed signs of predatory behavior.

18 67. In doing the acts complained of herein, the Individual Defendants, and each of them,
19 knowingly acted without immunity and within the course and scope of their employment to deprive
20 Plaintiff, a pretrial detainee, of his clearly established due process right under the Fourteenth
21 Amendment to the United States Constitution to be free from violence from other inmates. By their
22 acts and/or omissions that resulted in Plaintiff being confined to a cell with DaSilva and without
23 reasonably adequate monitoring, the Individual Defendants, and each of them, breached their duty of
24 reasonable care to Plaintiff.

25 68. As a direct and proximate result of the conduct of the Individual Defendants, Plaintiff
26 was harmed. Plaintiff experienced extreme pain and suffering, including but not limited to his anal
27 area, and severe emotional distress, including but not limited to fear, vulnerability, distrust, anxiety,
28 depression, embarrassment, and humiliation. Plaintiff is informed and believes, and on that basis

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1 alleges, Plaintiff will continue to suffer extreme mental pain and suffering and severe emotional
2 distress in the future as a result of the injuries alleged herein.

3 69. The conduct of the Individual Defendants, and each of them, was a substantial factor in
4 causing Plaintiff's harm.

5 70. As a further direct and proximate result of the aforementioned acts of the Individual
6 Defendants, and each of them, Plaintiff has and/or will incur expenses for medical and mental health
7 services, pharmaceuticals, and sundries reasonably required to treat the injuries incurred herein.

8 71. As a further direct and proximate result of the aforementioned acts of the Individual
9 Defendants, and each of them, Plaintiff has suffered economic harm, loss of earnings, and other
10 damages.

11 WHEREFORE, Plaintiff prays for relief as hereinafter as follows:

12 As to the FIRST CAUSE OF ACTION:

- 13 1. For special damages, including medical and related expenses, in an amount according to proof;
- 14 2. For general damages in an amount according to proof;
- 15 3. For punitive and exemplary damages in an amount according to proof;
- 16 4. For attorneys' fees by statute and as otherwise provided by law;
- 17 5. For costs incurred; and
- 18 6. For interest on any award of damages.

19 As to the SECOND, THIRD and FOURTH CAUSES OF ACTION:

- 20 1. For special damages, including medical and related expenses, in an amount according to proof;
- 21 2. For general damages in an amount according to proof;
- 22 3. As to the Individual Defendants named as Does 1-20, for punitive and exemplary damages in
23 amount according to proof;
- 24 4. For attorneys' fees by statute and as otherwise provided by law;
- 25 5. For costs incurred; and
- 26 6. For interest on any award of damages.

27 As to the FIFTH CAUSE OF ACTION, for:

- 28 1. General damages in an amount according to proof;

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2. Special damages in an amount according to proof;
3. Exemplary damages (Civ. Code, § 52.1, subd. (c); Civ. Code, § 52, subd. (b)(1));
4. Attorney's fees (Civ. Code, § 52.1, subds. (c) & (i); Civ. Code, § 52, subds. (a) and (b)(3));
5. Treble actual damages (Civ. Code, § 52.1, subd. (c); Civ. Code, § 52, subd. (a));
6. Costs of suit incurred in this action; and
7. Such other and further relief as the Court may deem just and proper.

As to the SIXTH CAUSE OF ACTION:

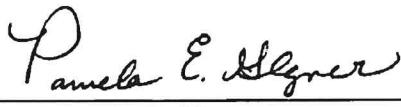
1. General damages in an amount according to proof;
2. Special damages in an amount according to proof;
3. Costs of suit incurred in this action; and
4. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a jury to be empaneled for the trial of this matter.

Dated: December 27, 2022

EMANUEL LAW GROUP

By: 
Pamela E. Glazner
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